

CAS (Sue Harper)

DGR/SH/19

Commissioner's File: CFC/007/1992



7/93

FAMILY CREDIT (GENERAL) REGULATIONS 1987

SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. For the reasons set out below, the decision of the social security appeal tribunal given on 23 July 1991 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 23 July 1991. In view of the complexity of the case, I directed an oral hearing. At that hearing the claimant, who was not present, was represented by Ms L Jacobs, a welfare rights officer, whilst the adjudication officer appeared by Mr L Scoon of the Solicitor's Office of the Department of Social Security.

3. On 27 November 1990 the claimant, who was born on 19 October 1975, applied for family credit. Her household consisted of herself, her partner and one dependent child. The claimant herself was not working, but her partner was employed as a carpenter for 40 hours per week and was paid every week. On 4 December 1990 the adjudication officer disallowed the claim on the basis that the claimant was under the age of 16 years, and had as a result to be treated as a child, and not a member of an unmarried couple. In due course, the claimant appealed to the tribunal.

4. In his submissions to the tribunal, the adjudication officer took a different point from that on which he had originally relied in refusing the claim. He contended that as the claimant

was at the relevant time under the age of 16, and as it was an offence for a man to have sexual intercourse with a girl under that age, public policy demanded that statutory benefits should not be paid for the purposes of maintaining an unlawful relationship.

5. In the event, the tribunal upheld the decision of the adjudication officer. They considered that the claimant was a child, and not a woman, and therefore could not be a member of an unmarried couple. As a result, she could not mount a claim for family credit in respect of herself, her partner, and her son. As regards the adjudication officer's contention that public policy prevented statutory benefit being paid where the object was to maintain an unlawful relationship, the tribunal declined to take this aspect of the decision into account. They preferred simply to base their decision on the fact that the claimant was a child.

6. The decision of the tribunal was a majority decision. The dissenting member was prepared to allow the claim, and gave the following reasons for his dissent:-

"[The claimant] is a member of unmarried couple. She satisfies 5 of the 6 criteria in R(SB) 17/81. She is a mother and not a child. The aim of Family Credit Benefit is to relieve hardship. [It] should be promoted to support the family on low wages. The Family Credit Regulations do not specify any minimum age for the receipt of Family Credit. The Tribunal should only rely on the Regulations in considering the claimant's entitlement to Family Credit."

7. Section 20(5) of the Social Security Act 1986 [now section 128(1) of the Social Security Contributions and Benefits Act 1992] is relevant to the appeal and provides as follows:-

"...., a person in Great Britain is entitled to family credit if, when the claim for it is made or is treated as made -

(a) his income -

(i) does not exceed the applicable amount; or

(ii) exceeds it, but only by such an amount that there is an amount remaining if the deduction for which section 21(3) below provides is made;

(b) he or, if he is a member of a married or unmarried couple, he or the other member of the couple, is engaged and normally engaged in remunerative work; and

(c) he or, if he is a member of a married or

unmarried couple, he or the other member, is responsible for a member of the same household who is a child or a person of a prescribed description."

8. Section 20(11) [now section 137(1) of the 1992 Act] defines "a child" as a person under the age of 16, and an "unmarried couple", as "a man and a woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances".

9. Although under the income support provisions it is not open to someone under the age of 16 to claim benefit, there is no restriction under the family credit provisions. It is possible on this count to mount the argument that the legislature by implication did not intend claims for family credit to be restricted by the age of the applicant. However, there are other considerations.

10. It is not in dispute in this case that, at the date of claim, the claimant and the father of her child were, in the ordinary sense of the expression, "living together as husband and wife". They were not married, but before they could satisfy the definition of "unmarried couple" they had to be "a man and a woman". I was not told the age of the father, but I assume that he was not under 16, and that the question of whether or not he was "a man" does not arise. But what of the claimant herself? Was she at the relevant time a "woman". Unfortunately, there is no definition in the Act or the Regulations as to what constitutes a woman. The Shorter Oxford English Dictionary adopts the definition "an adult female human being". "Adult" is defined as "grown up, having reached the age of maturity". Can a girl under the age of 16 be said to have grown up and reached the age of maturity? Of course, to complicate matters, some girls at that age are more mature than others. But be that as it may, a girl of 15 can have a baby, as happened in the present instance, and can it be contended that, because she has had a baby, she has reached adulthood? If the mere fact that she was able to have a child renders her an adult, what about a girl aged 12 who gives birth? It flies in the face of commonsense to treat such a girl as an adult. It would seem to me that the capacity to have a child, although very relevant in determining adulthood, is by no means conclusive. Other criteria must remain to be satisfied before in any objective sense it could be said that the girl in question had reached maturity. A girl under the age of 16 would normally be expected to grow further, and to mature further, mentally and emotionally. Normally, one associates adulthood with an age around 18. That is the present legal age of majority, and also the age at which men were during the War normally conscripted to serve in the Forces.

11. However, I do not think that in the context of the present case one can look solely at what would normally be regarded as adulthood. Family credit can be claimed by a female who is married. She is one of a married couple. And under English law marriage is permissible from the age of 16 onwards. And if a

girl aged 16 who is married can claim, a girl who is of the same age but unmarried can clearly be in no worse a position. For the legislature clearly equates unmarried with married couples. Accordingly, adulthood cannot start later than 16. But this does not necessarily mean that it can start earlier.

12. At this point it is necessary to take into account the definition of "child". This means a person under the age of 16. It does violence to the English language to equate a child with an adult. The former is the antithesis of the latter. One does not become an adult until one has ceased to be a child. Or putting the matter another way, so long as one is a child, one is not an adult. And if someone under the age of 16 is a child, then he or she is not an adult. Accordingly, in the present case, as the claimant was a child, and not an adult, she was not a woman, and as a result not one of an "unmarried couple". She could not therefore fall within section 20(5), and was not entitled, at the date of claim, to family credit.

13. However, the fact that she was not one of an unmarried couple was not in itself fatal to the claim. Subject to any possible restriction imposed by public policy (see paragraph 14 below), she could still succeed if she herself was "engaged and normally engaged in remunerative work" in accordance with section 20(5)(b). For indisputably she satisfied section 20(5)(c), being responsible for her child. But whereas the father of the child with whom she was living was undoubtedly "engaged and normally engaged in remunerative work", and had they been an "unmarried couple", she would have satisfied section 20(5), there is nothing to suggest that she herself was ever "engaged and normally engaged in remunerative work". She will not therefore succeed in her own right. It might be said to be somewhat odd that a girl under the age of 16 with a child is not entitled to claim income support, but seemingly (subject to the caveat mentioned above), where the other relevant conditions are satisfied, able to claim family credit. However that is how the legislation appears to have been drafted. Presumably, it was thought that the requirement that the claimant be "engaged and normally engaged in remunerative work" was sufficiently onerous not to open the flood gates to claims for family credit from under-age girls.

14. Finally, before leaving this matter, I should mention that Mr Scoon contended that, irrespective of any other consideration, the requirements of public policy precluded the claimant from deriving any advantage from her unlawful association with the child's father. He argued that, although by statute she could not consent to sexual intercourse with him, she could consent to live with him, and thereby enable him to indulge in criminal acts. I see the force of that argument, but in view of my finding that the claimant is not a woman, it is unnecessary for me to make any decision or express any view thereon. Further, what effect, if any, public policy might have, where a girl under 16 with a baby "engaged and normally engaged in remunerative work" applies for family credit, is likewise a matter which does not fall for my consideration. For in the present case, the

claimant was not a person "engaged and normally engaged in remunerative work."

15. Accordingly, the tribunal reached the right conclusion, and I must necessarily dismiss this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 14 January 1991

